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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,071	06/14/2006	Daniel N. Bauer	CH920030035US1	5849
68168	7590	11/25/2011	EXAMINER	
MICHAEL BUCHENHORNER, P.A.			BENOIT, ESTHER	
8540 SW 83 STREET				
MIAMI, FL 33143			ART UNIT	PAPER NUMBER
			2453	
			NOTIFICATION DATE	DELIVERY MODE
			11/25/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/563,071	<b>Applicant(s)</b> BAUER ET AL.	
	<b>Examiner</b> ESTHER BENOIT	<b>Art Unit</b> 2453	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1-13, 15, 17-20, 22-24 and 27-30 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-13, 15, 17-20, 22-24 and 27-30 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/2/2010, 9/30/2010, 9/30/2011</u> .                          | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Response to Amendments***

1. This Action is in Response to an Amendment filed on March 22, 2010. Claims 1 and 29 have been amended. Claim 16 has been cancelled. Claims 14, 21, and 25-26 were previously cancelled. Claims 1-13, 15-20, 22-24, and 27-30 are pending in this application.

### ***Response to Arguments***

2. Applicant's arguments, filed 03/22/2010 have been fully considered and are persuasive. However, upon further consideration, a new ground(s) of rejection is made in view of Narendran et al. (6,070,191) and Adams (5,963,944).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process*

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*Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). It is unclear if the applicant(s) intends to use the literal term “replica not available” in claims 1 and 29. This term is not clearly defined in the specification and the examiner is uncertain if the applicant(s) intends to state this is the exact response received by the system by using quotations around the term. If otherwise, the applicant(s) is asked to remove the quotations around this limitation.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 27-28 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter. Claim 27 is directed to a computer entity comprising a control unit. Given its broadest reasonable interpretation in light of the specification, the control unit can simply be software. A claim directed to an entity which does not comprise hardware is not statutory and therefore not patentable. Claim 28 is directed to an article of manufacture comprising a computer usable medium. Claims directed to a computer usable medium can embody both transitory and non-transitory subject matter. A claim directed to transitory subject matter is not statutory and therefore not patentable.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-13, 15-20, 22-24, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narendran et al. (6,070,191), in view of Adams (5,963,944).

**With respect to claim 1**, Narendran discloses:

- selecting at least one replica number by applying a given function, requiring the replica number and a document identifier as input (Col. 5, lines 47-61, *replica number*), wherein said document identifier comprises a predefined address where the replica is stored; (Col. 4, lines 10-16, *URL of server hosting the service*);
- determining at least one entity identifier, each entity identifier representing an entity in the network that might provide the replica (Col. 4, lines 10-15, *URL of server*)
- addressing a document related request to at least one of the identified entities ((Col. 4, lines 10-15, *server hosting service*)

Narendran does not explicitly teach:

- wherein, upon receiving a "replica not available" response from each of the addressed entities:

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- setting a lowest replica number out of the addressed replica numbers as an upper limit for a new set of replica numbers associated with another entity to be addressed with the document related request;
- selecting the another entity from the identified entities associated with the new set of replica numbers for addressing the document related request.

However, Adams discloses wherein, upon receiving a "replica not available" response from each of the addressed entities (Col. 10, lines 5-27 and lines 36-55, *if at least one replica is not retrieved*):

setting a lowest replica number out of the addressed replica numbers as an upper limit for a new set of replica numbers associated with the entities (Col. 10, lines 5-27 and lines 36-55, *if at least one replica is not detected at node, search for replica moves to next node*) and

selecting another entity from the identified entities associated with the new set of replica numbers for addressing the document related (Col. 10, lines 5-27 and lines 36-55, *moving to another network node that may hold replica of index file*).

Therefore, it would have been obvious for one skilled in the art to combine the teachings of Narendran with the teachings of Adams to use lower number of replicas when selecting an available replica, *because* it will allow the system to increase the availability of a replica file.

**With respect to claim 29**, the limitations of claim 29 are similar to the limitations of independent claim 1. therefore, claim 29 is rejected for the same reasons as claim 1 above. Please see rejection.

**With respect to claim 2**, Narendran discloses selecting  $k = N$  replica numbers, wherein  $N$  is a maximum number for replicas, by applying the given function  $k$  times: determining  $k$  entity identifiers (Col. 5, lines 47-61).

**With respect to claim 3**, Narendran discloses selecting  $k$  replica numbers from a maximum number of  $N$  replicas with  $k < N$ , by applying the given function  $k$  times, and determining  $k$  entity identifiers (Col. 5, lines 47-61).

**With respect to claim 4**, Narendran discloses wherein  $k \leq 5$  (Col. 5, lines 47-61).

**With respect to claim 5**, Narendran discloses wherein  $k = 1$  (Col. 5, lines 47-61).

**With respect to claim 6**, Narendran discloses addressing the document related request to all identified entities (Col. 4, lines 10-16).

**With respect to claim 7**, Narendran discloses addressing the document related request to only selected ones of the identified entities (Col. 4, lines 10-16).

**With respect to claim 8**, Narendran discloses addressing the document related request only to one entity selected from the identified entities (Col. 4, lines 10-16).

**With respect to claim 9**, Narendran discloses calculating a cost function for each of the  $k$  entities, the cost function providing a cost value as result which indicates a cost to address the relevant entity (Col. 12, lines 50-57).

**With respect to claim 10**, Narendran discloses calculating a cost function for each of the k entities, the cost function providing a cost value as result which indicates a cost to address the relevant entity, wherein each entity to be addressed is selected from the identified entities due to an associated cost value (Col. 12, lines 50-57).

**With respect to claims 11-13**, the claims are rejected for the same reasons as claim 10 above. Please see rejection of claim 10.

**With respect to claims 15, 17-20 and 22**, the claims are rejected for the same reasons as claim 1 above. Please see rejection of claim 1.

**With respect to claim 23**, Narendran discloses a computer program element comprising computer program code means which, when loaded in a processor unit of a computing entity, configures the processor unit to perform a method as claimed in any one of the preceding claims (Abstract)

**With respect to claim 24**, Narendran discloses a computing entity for retrieving a replica of an electronic document in a computer network, comprising a control unit designed to perform a method (Col. 10, lines 10-16).

**With respect to claim 27**, Narendran discloses a computing entity for depositing a replica of an electronic document in a computer network, comprising a control unit designed to perform a method (Abstract).

**With respect to claim 28**, Narendran discloses an article of manufacture comprising a computer usable medium having computer readable program code means embodied therein for causing retrieval of a replica of an electronic document in a computer network, the computer readable program code means in said article of



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manufacture comprising computer readable program code means for causing a computer to effect the steps (Abstract).

**With respect to claim 30**, Narendran discloses a computer program product comprising a physical computer readable medium having computer readable program code means embodied therein for causing retrieval of a replica of an electronic document in a computer network, the computer readable program code means in said computer program product for causing a computer to effect the functions (Abstract).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-3807. The examiner can normally be reached on Monday through Friday between 7:30 a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krista M. Zele can be reached on 571-272-7288. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B

November 16, 2011

/THUHA T. NGUYEN/

Primary Examiner, Art Unit 2453